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USA v. Morgan

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-2714

UNITED STATES OF AMERICA

v.

HAROLD MORGAN,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 97-cr-00269)
District Judge: Honorable Stewart Dalzell

Submitted Pursuant to Third Circuit LAR 34.1(a)
July 11, 2005

Before: ALITO and BECKER, *Circuit Judges*, and SHADUR, *District Judge*.*

(Filed: July 13, 2005)

OPINION OF THE COURT

BECKER, *Circuit Judge*.

*The Honorable Milton I. Shadur, United States District Judge for the District of Illinois, sitting by designation.

Pursuant to a plea agreement, appellant Harold Morgan entered a plea of guilty to counts one, three, five and seven of an eight-count indictment charging him with six counts of distribution of methamphetamine and one count of possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), and one count of criminal forfeiture of identified property, pursuant to 21 U.S.C. § 853. Morgan was sentenced to 135 months' imprisonment, eight years' supervised release, a \$1,000 fine, and a \$200 special assessment.

Appellant challenges his sentence under *United States v. Booker*, 543 U.S. —, 125 S. Ct. 738 (2005). Having determined that the sentencing issues appellant raises are best determined by the District Court in the first instance, we will vacate the sentence and remand for resentencing in accordance with *Booker*. See *United States v. Davis*, 407 F.3d 162 (3d Cir. 2005) (en banc).